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C O N F I D E N T I A L SECTION 01 OF 02 MEXICO 003865

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SUBJECT: ELECTORAL TRIBUNAL RECEIVES FIRST TRANCHE OF COMPLAINTS

REF: MEXICO 3422

Classified By: ACTING POLITICAL CHIEF ALAN MELTZER, REASONS: 1.4(B/D).

¶1. (C) Summary: On July 11, poloffs met with the head of public relations for the Electoral Tribunal of the Federal Judicial Power (TEPJF) to discuss the legal challenges to the presidential election results brought by PRD candidate Andres Manuel Lopez Obrador (AMLO). Although as of the time of our meeting Diaz had not yet seen the complaints and could not comment on them specifically, he did describe the procedure the TEPJF will follow in adjudicating them. He emphasized that magistrates have considerable discretion in crafting a resolution, although complainants must first show there is reason to believe there was an irregularity in a particular precinct or district. Although non-committal, Diaz seemed to believe that the PRD would have a difficult time meeting this burden in enough electoral precincts or districts to reverse the election results. End summary.

¶2. (C) On July 11, poloffs met with Jose Jacinto Diaz Carega, head of public relations for the TEPJF, to discuss the process by which the Tribunal will consider and resolve the complaints filed against the presidential election results. As of the time of our meeting, the TEPJF had not yet received the complaints and Diaz therefore was unable to comment upon them specifically, focusing instead on the procedure by which the TEPJF would review and decide them. Later in the day, the press reported that the first tranche of 355 complaints had been delivered to the TEPJF; these complaints reportedly consisted of 225 submitted by the PRD-led Coalition for the Benefit of Everyone, 129 submitted by Felipe Calderon's National Action Party, and one submitted by the PRI-led Alliance for Mexico.

The Process Before the Tribunal

¶3. (U) Our contact explained that political parties must submit their complaints to the corresponding Federal Electoral Institute (IFE) district council within 4 days of the completion of the final district count. Once a complaint is submitted to the district council, the council must post it publicly for 72 hours, during which time other political parties are permitted, as interested third parties, to submit an intervention supporting or refuting the complaint. At the conclusion of this 3-day period, the district council has 24 hours to submit to the TEPJF the original complaint, its response thereto, and any third party interventions. Based upon this timeframe, we understand that all complaints must be delivered to the TEPJF by IFE district councils no later than Friday, July 14.

¶4. (U) As complaints arrive at the TEPJF, they are assigned on a rotational basis to one of the seven magistrates. Each magistrate studies the complaints assigned to him/her and prepares a proposed resolution. All seven magistrates then meet in a public session to discuss and decide on a resolution of each complaint; decisions are made by a majority vote. To increase the transparency of the process, some or all of the magistrates' sessions may be televised.

¶5. (U) Our contact explained that parties can challenge the results in individual precincts or in entire electoral districts, which typically consist of hundreds of precincts. He noted, however, that individual precincts can only be challenged where the party's Election Day representative in the precinct registered a protest on the precinct's tally sheet; if the party representative signed the precinct's tally sheet without protest on Election Day, a challenge cannot subsequently be filed against the results from that precinct. A party nevertheless retains the right to protest the results in the electoral district in which the precinct is located.

#### Magistrates Enjoy Broad Discretion

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¶6. (C) Diaz emphasized that the complaints presented a case of first impression, as the TEPJF had never before received complaints in a contested presidential election. He explained that the law accorded the magistrates considerable discretion in deciding cases and that it was therefore difficult to predict how they would rule. Nevertheless, noting that the magistrates likely would not order the recount of precincts or districts unless the challenger had

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established reason to believe there was an irregularity, he implied that the challengers faced a fairly high burden of proof. (Note: In a June 2006 meeting (reftel), the magistrates assured poloffs that one remedy they were very unlikely to apply was the annulment of the entire presidential election. End note.)

¶7. (C) Diaz was unable to confirm a press report suggesting the PRD may have filed an additional legal challenge with the Supreme Court of Justice (SCJ). He noted that although the SCJ had jurisdiction over constitutional issues, it did not have jurisdiction over electoral issues. He emphasized that the TEPJF has the final word on all election-related challenges, and that its decisions may not be appealed. He closed the meeting by telling us that due to the confidentiality rules governing the TEPJF, he would not be

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able to meet with us again while this case was pending.

Comment: Seeking a Solomonesque Solution?

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¶8. (C) Diaz observed that while the PRD may have been well-prepared to defend an electoral victory, it appeared to have been poorly prepared to demand a recount in the event of its defeat. We understood him to mean that if the PRD indeed believed that widespread irregularities had occurred, it would have been well-advised to protest the results in individual precincts on Election Day. That the magistrates have considerable discretion in deciding these cases raises the possibility that they may seek to craft a resolution that takes the middle ground, such as by ordering a significant, but partial, recount. Doing so could restore the integrity of the election in public eyes and perhaps take the wind out of the sails of all but AMLO's most strident supporters, without creating the difficult precedent that a complete recount would set.

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